

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Crl.Rev.Pet.No. 486 of 1999()

**CRA.107/1996 of SESSIONS COURT, TRIVANDRUM
ST.37/1989 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I,
NEYATTINKARA**
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REVN. PETITIONER: APPELLANTS/ ACCUSED

- 1. P.JAYARAJ, USHA COTTAGE, PEYAD,
(HONARARY SECRETARY)
VILAPPIL KSHEERA VYAVASAYA SAHAKARANA SANGAM LTD.**
- 2. VILAPPIL KSHEERA VYAVASAYA SAHAKARANA
SANGAM LTD. , PEYAD, PEYAD P.O.,
REP.BY ITS HONARARY SECRETARY, P.JAYARAJ THE
1ST APPELLANT.**

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS: RESPONDENTS/ COMPLAINANT & STATE

- 1. R.NARAYANAN NAIR, FOOD INSPECTOR,
THIRUVANANTHAPURAM CIRCLE.**
- 2. STATE, REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI .AMJAD ALI

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

K.R.UDAYABHANU, J

Crl.R.P.No.486 of 1999

Dated this the 6th day of July, 2007

O R D E R

The revision petitioner is the accused who stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo S.I. for three months and to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for two weeks.

2. The prosecution case is that on 14.9.1993, the Food Inspector purchased milk from the first accused, the Honorary Secretary of Vilappil Ksheera Vyavasaya Sahakarana Sangam Ltd. No.3116, Peyad and the same was found to be adulterated.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 4 and Exts. P1 to P33. The defence examined DW1.

4. The contention raised by the counsel for the revision petitioner is that the offence will not be attracted in view of the proviso to Section 10(2) of the PFA Act, that milk being a primary food cannot be taken as sample if it is not intended for sale as

such food. It is the contention that the Society involved is a primary milk Co-operative Society and the Society was collecting milk from the individual suppliers and selling the same to Milma and that there was no direct retail sale. It is seen that both the courts below have not considered the above aspect of the case. It is also contended that A1/revision petitioner is only the honorary Secretary and is not actively involved in the affairs of the Society. It is true that A1 Food Inspector purchased the milk. It is the contention that the proviso to Section 10(2) is attracted is raised when the witnesses were cross examined. It was put to PW1 the Food Inspector that there is no direct sale to the customers from the Society. The Food Inspector denied the same. PW2, the witness for the prosecution has stated that PW2 the witness to the prosecution who is also Salesman of the Society has testified that the function of the Society is to collect milk and sell it to the diary and the diary fixed the price as per the chart after ascertaining the quantity of the fat etc. His function is only to collect the milk, measuring the same and taking into diary. PW4, the independent witness, has also stated that he is a

member of the Society for the last about 8 years and the Society is functioning under the Dairy Development Board. He was also supplying milk to the Society.

5. In the circumstances and in view of the suggestion in the cross examination of PW1 and the evidence of PWs' 2 and 4 it appears that the contention of the counsel for the revision petitioner that the Society concerned was a primary Co-operative Society supplying milk to Milma appears true. Hence, I find that the proviso to Section 10(2) will apply in the instance case. Hence, the decision of the courts below are set aside. The accused/revision petitioner is acquitted.

The criminal revision petition is allowed.

**K.R.UDAYABHANU,
JUDGE**

csl

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